



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

RECEIVED
TCEQ
WATER QUALITY DIV.

REPLY TO
ATTENTION OF:

JAN 08 2009

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Executive Office

SUBJECT: Permit Application: SWG-2007-01865, Captain Jack Roberts
CERCLIS EPA ID: TXN000606611, San Jacinto River Waste Pits

Mark R. Vickery
Executive Director
MC109
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Vickery:

This is in reference to my August 11, 2008, letter, informing you that the elevation of the San Jacinto River Waste Pits (SJWP) site to the Environmental Protection Agency (EPA) National Priorities List was recently brought to our attention by the Texas Parks and Wildlife Department. In December of 2007, we authorized an extension of time for dredging under permit SWG-2007-01865 - Captain Jack Roberts, which is adjacent to SJWP. There are several hundred other permits issued in the area of the San Jacinto River at it's confluence with Old River, in Harris County, Texas. In my letter, I requested input regarding TCEQ's position on the issuance of Captain Robert's permit, the management of currently issued permits, and the ongoing issuance of permits in the area of the SJWP site.

In an October 29, 2008, response, you explained that TCEQ has been developing a Total Maximum Daily Load (TMDL) for dioxin in the Houston Ship Channel and Upper Galveston Bay. You stated that TCEQ requests that the Corps suspend permit SWG-2007-01865 given that the highest dioxin concentrations collected for the TMDL project are located in the footprint of the permit area and the potential exists for re-suspension during dredging activities. In regard to TCEQ's position on the management of other permits in the area, you explained that a process has been initiated to investigate and define the nature and extent of contamination in the study area; and until a clear delineation of contamination is reached, TCEQ encourages the Corps to continue to coordinate with TCEQ and other agencies to evaluate site specific data for each permit appropriately. However, you did not clearly indicate what responsibilities TCEQ was going to immediately undertake under your 401 Water Quality authority regarding coordinating with the applicant and a suspension or revocation of the applicants 401 Water Quality Certification. Please address this concern.

Pursuant to 33 CFR 325.7, I may reevaluate the circumstances and conditions of a permit, at the request of a third party and initiate action to suspend or revoke a permit as may be made necessary by considerations of the public interest. Among the factors that must be considered are whether or not circumstances relating to the authorized activity have changed since the permit

was issued or extended; the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. A permit may be suspended only after a written determination and finding is prepared substantiating that immediate suspension is in the public interest. Your potential suspension or revocation of the 401 Water Quality Certification would certainly qualify as a change in circumstances to the authorized activity.

Based on the above information, I am requesting TCEQ provide specific information which substantiates a determination to suspend the subject permit and/or permits. Please let me know when TCEQ will suspend or revoke their Section 401 Water Quality Certification. Actions taken under Section 401 of the Clean Water Act, and/or the Comprehensive Environmental Response, Compensation, and Liability Act authorities provide the most direct cause for a determination to suspend. I would appreciate receiving your response within 30 days so that I may make a timely decision on whether to initiate the suspension process.

If you have any questions please contact me 409-766-3001 or Mr. Sam Watson at 409-766-3946, if you would like to discuss this request in more detail.

Sincerely,

David C. Weston
Colonel, Corps of Engineers
District Commander

Copies Furnished
See Page 3 and 4

Copies Furnished:

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